



October 24, 2002

Mr. Cary L. Bovey
City Attorney
City of Bartlett
600 Round Rock West Drive, Suite 600
Round Rock, Texas 78681

OR2002-6042

Dear Ms. Bovey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171184.

The City of Bartlett (the "city") received a request for a named attorney's "line item billings" for the month of July, 2002, copies of another named attorney's billings to the city concerning a particular lawsuit, and a copy of a named attorney's contract with the city. You state that the city has released some of the requested information to the requestor. You further state that "[n]o written contract exists between the City of Bartlett and Randy Howry (or Randy Howry's law firm), therefore the City does not have any information responsive to this portion of the request."¹ Accordingly, the Act does not apply to the requested contract. You claim that the submitted information, Randy Howry's fee bill to the city concerning the lawsuit, is excepted from disclosure under section 552.101 of the Government Code and Rule 503 of the Texas Rules of Evidence. We have considered your claim and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

¹The Public Information Act (the "Act") applies only to information in existence at the time the governmental body receives the request for information. *See* Open Records Decision Nos. 452 at 2-3 (1986) (document is not within the purview of the Act if, when a governmental body receives a request for it, it does not exist), 342 at 3 (1982) (Act applies only to information in existence, and does not require the governmental body to prepare new information).

We note, and you acknowledge, that the submitted attorney fee bills are specifically made public under section 552.022 of the Government Code, except to the extent the information is expressly confidential under other law. Section 552.022(a) provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege.

Gov't Code § 552.022(a)(16). You contend that portions of the information in the attorney fee bills that you have marked are excepted from disclosure under rule 503 of the Texas Rules of Evidence. The Texas Supreme Court recently held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). You also assert that the tax identification number in the bill is made confidential by section 6103(a) of title 26 of the United States Code, a provision which is also "other law" for purposes of section 552.022. Therefore, we will determine whether the information you have highlighted in the submitted attorney billing statements is confidential under section 6103(a) and under rule 503 of the Texas Rules of Evidence.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes. Section 6103(a) of title 26 of the United States Code provides that tax return information, including a tax identification number, is confidential. Therefore, the federal tax return information in the submitted attorney fee bills, which you have highlighted, must be withheld from disclosure under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.

You also argue that information you have highlighted in the submitted attorney fee bills is confidential under rule 503 of the Texas Rules of Evidence. Rule 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503.

A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *See id.* Therefore, in order for information to be withheld from disclosure under rule 503, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.-Houston [14th Dist.] 1993, no writ).

Based on our review of your arguments and the submitted attorney billing statements, we conclude that you have demonstrated that some of the marked portions of the billing statements are encompassed by the attorney-client privilege and, therefore, may be withheld from disclosure pursuant to rule 503 of the Texas Rules of Evidence. We have marked the information the city may withhold under rule 503.

In summary, the city must withhold from disclosure the tax identification numbers you have highlighted under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. The city may also withhold from disclosure the information we have marked under rule 503 of the Texas Rules of Evidence. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 171184

Enc: Submitted documents

c: Ms. Carolyn Logan
2409 South Old Bastrop Highway
San Marcos, Texas 78666-8973
(w/o enclosures)